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Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In the Supreme Court of the United States

ROBERT WHITE, PRO SE,

Petitioner;

v.

JOSEPH B. COLLINS,
Chapter 7 Trustee for
CK LIQUIDATION CORP,

Respondent.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
for the First Circuit

PETITIONER'S APPENDIX

Robert White - pro se
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JUDGMENT
Of
THE FIRST CIRCUIT COURT OF APPEALS,

Entered on June 29, 2007

United States Court of Appeals
For the First Circuit

No. 06-2423

IN RE: CK LIQUIDATION CORPORATION,

Debtor.

ROBERT WHITE,

Appellant,

v.

JOSEPH B. COLLINS, CHAPTER 7 TRUSTEE,

Appellee.

Before

Boudin, Chief Judge,
Lynch and Howard, Circuit Judges.

JUDGMENT

Entered: June 29, 2007

We have carefully reviewed the record in this case, including the briefs of the parties. We affirm the judgment of the bankruptcy court, essentially for the reasons given in order and the memorandum of

decision, dated May 9, 2006. We add only the following.

The record indicates that White was given prior notice of the sale of debtor's assets and the opportunity to challenge that sale. Hence, any claim that the sale violated his right to due process is without foundation.

White's claim arises from a prepetition transaction with debtor for royalty payments, not from a postpetition transaction with the trustee or debtor in possession. Hence, it does not qualify as an administrative expense under Section 503(b) of the Bankruptcy Code. In re FBI Distribution Corp., 330 F.3d 36, 42 (1st Cir. 2003); see also In re Waste Systems, 280 B.R. 824, 828 (Bankr. D. Del. 2002) (royalty payments not administrative claims).

Finally, the order limiting White's ability to file further actions in this case is well supported by the record and properly crafted to prevent further inappropriate filings in this case.

Affirmed.

By the Court:

Richard Cushing Donovan, Clerk.

By: /s/ MARGARET CARTER
Chief Deputy Clerk.

[cc: Robert White, Christopher M. Candon, Esq. and Michael J. Goldberg, Esq.]

MEMORANDUM OF DECISION AND ORDER
And
JUDGMENT
Of
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS,

Entered on August 28, 2006

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 06-40114-RWZ

IN RE: CK LIQUIDATION CORPORATION

ROBERT WHITE
v.

CHAPTER 7 TRUSTEE JOSEPH B. COLLINS

MEMORANDUM OF DECISION AND ORDER

August 28, 2006

ZOBEL, D.J.

Appellant Robert White appeals, pro se, from two orders entered by the United States Bankruptcy Court on May 9, 2006. The first order—the "Administrative Expense Order"—denied appellant's claim for administrative expense priority under 11 U.S.C. §§ 503(b) and 507(a)(1). The second order—the "Motion to Vacate Order"—denied appellant's second Motion to Vacate the Sale Order and enjoined appellant from filing any further papers, pleadings, or documents in the Chapter 7 case, with two narrow exceptions. With respect to the Administrative Expense Order, the Bankruptcy Court correctly concluded that appellant's claim was a prepetition claim arising out of a prepetition contract, and that the contingency of certain payments on postpetition sales did not transform the claim into an

administrative expense. Appellant's claim was thus not entitled to priority. See In re FBI Dist. Corp., 330 F.3d 36, 48-49 (1st Cir. 2003). Nor was it improper for the Bankruptcy Court to deny appellant's second Motion to Vacate the Sale Order, which was nothing more than an attempt to relitigate—for the third time—the propriety of the Sale Order. (See Appellee's Br. 4-12 (setting forth lengthy procedural history of the bankruptcy case).) The record reveals no merit in appellant's claim that the entry of the Sale Order violated due process. Moreover, appellant's motion—filed over two and one-half years after entry of the Sale Order—was untimely. See Fed. R. Civ. P. 60(b) (requiring motions pursuant to Fed. R. Civ. P. 60(b)(4) to "be made within a reasonable time"). Finally, in light of appellant's excessive filings and abusive motion practice, the Bankruptcy Court's decision to bar appellant from filing additional papers, except in two narrow circumstances, was well within its discretionary power "to regulate the conduct of abusive litigants." Cok v. Family Court of R.I., 985 F.2d 32, 34 (1st Cir. 1993) (per curiam).

Accordingly, both Orders of the Bankruptcy Court are affirmed.

_____ /s/Rya W. Zobel
DATE RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: CK LIQUIDATION CORP.

ROBERT WHITE

v. CIVIL ACTION NO. 06CV40114-RWZ

CHAPTER 7 TRUSTEE JOSEPH B. COLLINS

JUDGMENT

ZOBEL, D.J. August 28, 2006

In accordance with the Memorandum of Decision and Order dated 8/28/06 affirming the ruling of the bankruptcy court; it is hereby ORDERED:

CASE DISMISSED.

By the Court,

s/ Lisa A. Urso
Deputy Clerk

MEMORANDUM OF DECISION

By

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS,

Entered on May 9, 2006

United States bankruptcy Court
District of Massachusetts

In Re:	)	CHAPTER 7
	)	Case No.
CK LIQUIDATION CORPORATION (f/k/a CADKEY CORPORATION	)	03-44906- HJB
Debtor	)	

MEMORANDUM OF DECISION

Before this Court is a request by Robert White ("White") – a creditor and frustrated bidder for the assets of CK Liquidation Corporation (then known as CADKEY Corporation) (the "Debtor") – that this Court vacate its order of November 6, 2003, authorizing a sale of substantially all of the Debtor's assets to Kubotek Corporation. Styled as a "Motion to Vacate Sale Order," the title conveys no hint that White actually asks this Court to reconsider its previous denials of the same request for relief. White has attempted to reverse the sale to Kubotek Corporation since November of 2003, taking his arguments to this Court, the United States District Court for the District of Massachusetts, the First Circuit Court of Appeals and the United States Supreme Court. His efforts have borne no fruit. But he has succeeded in dissipating assets of the bankruptcy estate, forcing estate functionaries to oppose each of his frivolous requests and appellate ventures. A more complete history of these events was catalogued by this Court in Its Memorandum of Decision dated march 20, 2006, in explanation of its order of the same date, denying White's request to proceed in forma pauperis with regard to yet another

appeal. See In re Ck Liquidation Corp., 339 B.B. 283 (Bankr. D. Mass. 2006).

In order to deal with the untimeliness of the present motion (hereafter, the "Motion to Vacate"), White cloaks his arguments within Rule 60(b)(4)[1] of the Federal Rules of Civil Procedure. That rule provides that a party may seek relief from a final order if "the judgment is void," but provides so specific time limitation for the bringing of such a request. However, the motion must be made "within a reasonable time." Fed. R. Civ. P. 60(b). As for his underlying arguments, White raises two types. First he notes that his claim against the Debtor is for royalties arising from a pre-petition contract under which he had sold certain intellectual property to the Debtor. White says that because his contractual rights to the royalties were not "executor" within the meaning of 11 U.S.C. §365, they could not be rejected; therefore, his right to royalties could not be converted into a "claim" under 11 U.S.C. §501 without "notifying White which of the provisions of §363(f)(1-5) converted White's contract into a claim, when in fact none do..." Because no such notice was given, White maintains, he was denied due process. Second, he argues that the sale offended "conscience and justice," "violated

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[1] Federal rule (60(b) provides in relevant part:

> On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons:
>
> ...
>
> (4) the judgment is void....
>
> ...
>
> The motion shall be made within a reasonable time....

Subject to exceptions not here relevant, Federal Rule 60 applies in bankruptcy cases. See Fed. R. Bankr. 9024.

[his] interest in the Debtor's property," left his "interest intact," and violated the "absolute priority rule."

The Chapter 7 trustee (the "Trustee") and Kubotek Corporation have each opposed the Motion to Vacate. Their objections are well made. White's arguments simply lack merit.

A Federal Rule 60(b)(4) motion must be made within a reasonable time. The Present Motion to Vacate was not. Over two and one-half years have passed since the issuance of the challenged order. White never obtained a stay pending appeal. Undoubtedly, the assets have now become well integrated into Kubotek's business. None of the issues raised by White is newly discovered. They have either been raised in some form and denied, or could have been raised as early as the sale hearing itself and were not. Morever, "[a] judgment is not void merely because it is or may be erroneous... [a] a judgment is void, and therefore subject to relief under Rule 60(b)(4), only if the court lacked jurisdiction or in circumstances in which the court's action amounts to a plain usurpation of power constituting a violation of due process." United States v. Boch Oldsmobile. Inc., 909 F.2d 657 (1st cir. 1990). There is no question that the Court had jurisdiction to enter the sale order and now has jurisdiction to determine White's claim, if any. See 28 U.S.C. §157(b)(2)(B) and (N).

White's underlying arguments have no greater force of reason. The parties agree that the contract between White and the Debtor was not executory. Accordingly, White's claim for royalties, if any, is a general unsecured claim, [2] and he was entitled to no

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[2] White's equally frivolous motion to have his claim treated with administrative priority under 11 U.S.C §507 has been denied by order of even date.

specific notice that his claim would be so treated, any more than any other unsecured creditor was entitled to notice of the treatment of its claim. It is not disputed that White was given timely notice of the sale. Indeed, his then attorney attended the sale hearing and objected on other grounds. White's reference to the absolute priority rule is misplaced. The "absolute priority rule" is a colloquialism describing the right of a debtor to have a Chapter 11 plan confirmed over the objection of a dissenting class of unsecured creditors by meeting a condition described in 11 U.S.C. §1129(b)(2(B)(ii). The Absolute priority rule has no application here, as the Debtor's assets were sold under §363 of the Bankruptcy Code, and not pursuant to a Chapter 11 plan. White's remaining arguments are equally meritless, being derivative of those made in connection with White's previous efforts to have the sale vacated, which arguments have been considered and rejected by this Court and those courts on review.

Tor these reasons, White's motion to Vacate must be denied. But, in his opposition, the Trustee asks for more. The Trustee notes the plethora of motions, oppositions, responses and other papers filed by White and asks the Court to stop this abuse of and interference with the estate's administration. This is not the first such request by the estate's representative. Earlier in the case, the predecessor Chapter 7 trustee asked the Court to bar further fillings by White. See In re Ck Liquidation, 339 B.R. at 288. This Court was reluctant to elect that option when first presented, viewing such a bar as a drastic remedy and satisfied that White's actions could be controlled by resort to Bankruptcy Rule 9011, if necessary. [3] id. This Court

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[3] Federal Rule of Bankruptcy Procedure 9011 requires pro se parties to sign motions and other pleadings filed with the court.

was wrong. The subsequent travel of this case has demonstrated White's success to date in shielding himself from such orders. He has declined to pay monetary sanctions issued for Bankruptcy Rule 9011 sanctions, declaring himself judgment-proof. [4] He has largely ignored orders holding him in contempt of court and has even tolerated incarceration, notwithstanding his ability to pay the rather modest sanctions ordered by this Court to date. In fact, he continued to file papers while incarcerated. This Court has already determined that "the various forms of relief requested by White have long ago moved beyond the frivolous to the malicious and vexatious." Id.

The Court can not allow White to continue punishing the estate functionaries for his lost opportunity to purchase the Debtor's assets. Current

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See Fed R. Bankr. P. 9011(a). By their signature, the party represents that the filed paper "to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -

> (1)[ ] is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfirvolous argument for the extension, modification, or reversal of existing law or the establishment of a new law;
>
> ....

Fed. R. Bank. R. 9011(b)(1) and (2). If the Court finds that bankruptcy Rule 9011(b) has been violated, it may issue appropriate sanctions to deter further violation of the rule See Fed. R. Bankr. P. 9011(c).

[4] Notwithstanding his claims of poverty, White has managed to travel routinely from California to Massachusetts to attend hearings.

circumstances require this court to adopt the approach urged by the Trustee. However, such an approach must be geared to protecting the estate from White's machinations while still preserving his rights. Three distinct question must be addressed. Does a court have the authority to bar a creditor from filing papers? How should such an order be crafted? And how should such an order be enforced? The court turns to each of these in turn.

It is well-settled that a federal court may, in appropriate circumstances and with a well-tailored order, prospectively bar an abusive pro se litigant from filing papers. "Federal courts plainly possess discretionary power to regulate the conduct of abusive litigants." Cok. V. Family Court of Rhode Island, 985 F.2d 32, 34 (1st Cir. 1993); Castro v. United States, 775 F.2d 399, 408 (1st cir. 1985); Pavilonis v. King, 626 F.2d 1075, 1079 (1st Cir. 1980), cert. denied 449 U.S. 829 (1980). A sufficient record must be established to support and justify such an order. Cok, 985 F.2d at 35. And the restrictions must not be of unlimited breadth. Id. They must be tailored to deal with the problems identified by the Court.

Here, the Court has already established a record of actions by white that more than justify and, indeed, mandate a judicial response. See In re Ck Liquidation, 339 B.R. 283. White was served with the Trustee's request for a bar against filings. See "Objection of Chapter 7 Trustee to Robert White's Motion to Vacate Sale Order," par. 18. [5] He had an opportunity to speak to that request at the hearing on the Motion to Vacate, but failed to do so. There is no reasonable alternative

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[5] In fact, White also had notice of this Court's regret at not having issued an order when first requested by the predecessor Chapter 7 Trustee. In re CK Liquidation, 339 b.R. at 288, n. 12.

to such restrictions. Monetary sanctions have been ignored. Contempt sanctions have been ineffective.

This Court is left to craft a restriction that will minimize impediments to White's access to the federal court, while still maximizing protection for the estate against a further dissipation of estate assets. First, any restriction should apply only to filings which are made pro se. Presumably, an attorney will be more wary of filing a frivolous pleading found to be a violation of Bankruptcy Rule 9011 and the Court will be more effective in enforcing sanctions. Second, the restriction should apply only to requests for relief relative to this estate. There is no evidence that White has acted abusively or is even a party in any other case. Third, it would be inappropriate were this Court to restrict White's defense with respect to any matter where he is involuntarily drawn into a dispute as a named respondent or defendant. And fourth, this Court should not and can not, restrict any filing which are incident to an appeal by White from any order of this Court.

Accordingly, this court will bar White from filing, pro se, any papers in this Chapter 7 case, except those which relate to: 1) any matter in which he is a named respondent or defendant, or 2) an appeal of any order of this Court.

Finally, this Court has already complained of its difficulty enforcing its orders designed to reduce frivolous filings by White. Any order which simply enjoins White from filing such papers is subject to the same infirmities. Presently, the Clerk of this court must accept all papers submitted - and, upon their filing, other parties are compelled to respond. The court must break that cycle. Accordingly, the court will order that, upon the filing of any paper by White which violates the terms of the restrictions set forth above, the Court will strike the papers with the following

endorsement: "Struck in accordance with Court order dated May 9, 2006." A response by any other party in the case shall be excused. Furthermore, upon entry of any such order striking a paper filed by white in accordance herewith, the Court shall accrue, without further order or hearing, an automatic sanction of $1,000, payable to the Trustee on behalf of the estate. Those sums will accrue until the Trustee requests calculation of a final liquidated amount. Once liquidated, the Trustee shall first offset such amount against any dividend payable to White on account of any claim which he may have in the case, and then either collect or sell the remaining obligation in accordance with 11 U.S.C. §363.

CONCLUSION

It is the obligation of the courts of the United States to provide free and open access to those who seek relief under the Constitution and the laws of the United States. It is the concomitant obligation of those courts to protect the integrity of their processes from those who would abuse the courts to further their improper ends.

The Motion to Vacate Sale Order, filed by Robert White is DENIED. Rest5rictions, as described above, will be put in place to reduce his opportunity for filing frivolous papers in the future.

An order will issue forthwith in conformity with this Memorandum of Decision.

DATED: May 9, 2006 /s/ Henry Jack Boroff
Henry J. Boroff
United States Bankruptcy Judge

ORDER
By
THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS,

Entered on May 9, 2006

United States bankruptcy Court
District of Massachusetts

In Re:	) CHAPTER 7
	) Case No.
CK LIQUIDATION CORPORATION (f/d/a CADKEY CORPORATION	) 03-44906- HJB
Debtor	)

ORDER

WHEREAS, on or about April 1, 1998, Baystate Technologies, Inc. (the predecessor of CK Liquidation Corporation f/k/a Cadkey Corporation [the "Debtor"]) entered into an agreement with FastSURF, Inc., Robert White and David Reyburn whereby Baystate acquired certain computer software and agreed to pay White and Reyburn royalties on subsequent sales of software products incorporating the purchased software (the "Acquisition Agreement"); and

WHEREAS, on August 22, 2003 (the "Petition Date"), the Debtor filed a petition under Chapter 11 of the United States Bankruptcy Code and, on March 4, 2004, the case was converted to a case under Chapter 7; and

WHEREAS, by order of November 6, 2003, this Court approved a sale of substantially all of the Debtor's assets, which sale closed on or about December 3, 2003; and

WHEREAS, White claims to be owed monies due under the Acquisition Agreement for royalties which accrued both before and after the Petition Date through the closing of the sale; and

WHEREAS, White has filed an "Application for Payment of Priority Administrative Claim" (the "Application") and maintains that:

1. the Acquisition Contract is not an executory contract within the meaning of 11 U.S.C.§365 [1]; and
2. the estate derived a post-petition benefit from its post-petition sales employing the software obtained under the Acquisition Agreement, and therefore White is entitled to an administrative claim under 11 U.S.C. §§ 503(b) [2] and 707(a)(1);[3] and

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[1] The parties agree that the Acquisition Agreement was not executory and, in the light of the fact that the transfer of the software was completed pre-petition and only the payment obligation remained, the Court agrees with their conclusion.

[2] 11 U.S.C. §503(b), as applicable to the instant case (filed filed prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (2005), provides:

> ...
>
> (b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including –
>
> (1)(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for the services rendered after the commencement of the case;
>
> ....

[3] 11 U.S.C. §507(a)(1), as applicable to the instant case, provides:

> (a) The following expenses and claims have priority in the following order:
>
> (1) First, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.
>
> ....

WHEREAS, the chapter 7 trustee opposes the Application and maintains that royalty payments due, if any, are general unsecured claims against the estate and are not entitled to administrative priority; and

WHEREAS, it is well-settled that "for a claim to qualify as an administrative expense under subsection 503(b)(1), (1) it must have arisen from a transaction with the trustee or debtor in possession, rather that from a prepetition transaction with the debtor, and (2) the consideration supporting the claim must have benefitted the estate in some demonstrable way." Mason v. Official Comm. Of Unsecured Creditors (In re FBI Distrib. Corp., 330 F.3d 36, 42 (1st Cir. 2003)(emphasis added); see also Cramer v. Mammoth Mart. Inc. (In re Mammoth Mart. Inc.), 536 F.2d 950, 954 (1st Cir. 1976); and

WHEREAS, White was not engaged in any post-petition transaction with the Debtor; rather, he claims only that his pre-petition transaction with the Debtor benefitted the post-petition estate;

Now, therefore, the Court FINDS AND RULES that White has failed to establish priority under §§ 503(b) and 507(a)(1). Accordingly, the "Application for Payment of Priority Administrative Claim" is DENIED.

DATED: May 9, 2006 /s/ Henry Jack Boroff
Henry J. Boroff
United States Bankruptcy Judge

ORDER
By
THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS,

Entered on May 9, 2006

United States bankruptcy Court
District of Massachusetts

In Re:	)	CHAPTER 7
	)	Case No.
CK LIQUIDATION CORPORATION (f/d/a CADKEY CORPORATION	)	03-44906- HJB
Debtor	)	

ORDER

For the reasons set forth in this Court's Memorandum of Decision of even date:

1. the "Motion to Vacate Sale Order," filed by Robert White ("White") on March 15, 2006 is DENIED; and

2. White is RESTRAINED AND ENJOINED from filing, pro se, any further papers, pleading and documents in this case (an "Excluded Paper"), excepting only an otherwise Excluded Paper which relates to:

   a. a contested matter or adversary proceeding in which he is a named respondent or defendant; or

   b. an appeal of an order of this Court; and

3. in the event that White should, in violation of Paragraph 2 of this Order, file an Excluded Paper:

a. the Excluded Paper will be struck with an endorsement of "Struck in accordance with Court's order dated May 9, 2006," and all other parties in interest shall be excused from responding thereto; and

b. White will be sanctioned in the amount of $1,000.00 for each Excluded Paper filed,[1] without further order or hearing, payable to the Trustee on behalf of the estate, such sums to accrue until Trustee requests a calculation of a final liquidated amount and then collected as follows:

(i) first offset against any dividend payable to White on account of any claim which he may have in the case; and

(ii) the balance incorporated in an order and judgment which may be collected by the Trustee or sold in accordance with 11 U.S.C. §363.

DATED: May 9, 2006 /s/ Henry Jack Boroff
Henry J. Boroff
United States Bankruptcy Judge

[1] A multi-page document will be treated as a single Excluded Paper.

FIRST CIRCUIT COURT OF APPEALS
Docket for Case
Showing

ORDER DENYING PETITIONER'S MOTION FOR RECONSIDERATION,

Entered on August 14, 2007

United States Court of Appeals
For the First Circuit

No. 06-2423

IN RE: CK LIQUIDATION CORPORATION,

Debtor.

ROBERT WHITE,

Appellant,

v.

JOSEPH B. COLLINS, CHAPTER 7 TRUSTEE,

Appellee.

Before
Boudin, Chief Judge,
Lynch and Howard, Circuit Judges.

ORDER

Entered: August 14, 2007

Appellant's "motion for reconsideration or clarification" of this court's judgment, dated June 29, 2007, is denied.

By the Court:

Richard Cushing Donovan, Clerk.

By: /s/ MARGARET CARTER
Chief Deputy Clerk.

[cc: Robert White, Christopher M. Candon, Esq. and Michael J. Goldberg, Esq.]

PETITIONER'S CONTRACT

With

Pre-Petition Debtor

BAYSTATE TECHNOLOGIES, INC.
d.b.a.
CADKEY CORPORATION

ACQUISITION AGREEMENT

AGREEMENT dated of this 1st day of April, 1998, by and between BAYSTATE TECHNOLOGIES, INC. ("Purchaser"), a Massachusetts corporation, with a place of business at 33 Boston Post Road West, Suite 420, Marlborough, MA 01752, FastSURF, Inc. ("Seller"), a California corporation, with a place of business at 30 South Washington Street, Sonora, California 95370, Robert White, an individual and principal shareholder of Seller, residing in Sonora, California ("White"), and David Reyburn, and individual residing in Goshen, Indiana ("Reyburn").

WITNESSETH

WHEREAS, Seller, White and Reyburn desire to sell and Purchaser desires to acquire certain of the assets, business and properties of Seller used in connection with Seller's mechanical CAD (computer aided design) software business hereinafter specified.

NOW, THEREFORE, the parties hereto agree as follows.

ARTICLE I
PURCHASE AND SALE

Section 1.01. Closing. The closing (the "Closing") of the transactions set forth herein shall

take place at 9:00 A.M. on or about April 2, 1998 in Worcester, Massachusetts or at such other time and place as Purchaser and Seller may agree. (Hereinafter, the date on which the Closing shall take place is referred to as the "Closing").

Section 1.02. Purchased Assets. Effective as of the Closing:

(a) Seller, White and Reyburn, jointly and severally, except as hereinafter provided, hereby do convey, transfer, assign and deliver, or cause to be conveyed, transferred, assigned and delivered, to Purchaser the following assets and properties used and owned or held by Seller, White and Reyburn (the "Purchased Assets"):

(1) the software known as FastSURF and FastSOLID, including source code, object code, screen displays, interfaces and all other components (hereinafter the "Purchased Software"), and all of Seller's, White's, and Reyburn's rights therein, whether intellectual property rights, trade secret rights or otherwise, and Seller's, White's and Reyburn's rights in all foreign translations of the Purchased Software;

(2) all of the contracts with respect to the Purchased Software, (including licenses and distributorship agreements, with exception of any l8icense agreement between Seller and Spatial Technology, Inc. (hereinafter the "Included Contracts");

(3) all of the customer contracts with respect to the Purchased Software (annual update, annual update/upgrade or tech support contracts) for both active and inactive customers, a complete list of which is set forth on Schedule 1.02-3;

(4) the complete list of customers of Seller and end users of the Purchased Software and set forth on Schedule 1.02-4;

(5) all of Seller's, White's and Reyburn's copyrights, copyright registrations, copyright applications, and copyright licenses, with respect to the Purchased Software;

(6) all manuals, technical descriptions, user guides and documentation, in electronic and hard copy form, of the Purchased Software in Seller's possession or control, as are being delivered to Purchaser on the Closing and all of Seller's copyright, copyright registrations, copyright applications, and copyright licenses with respect thereto;

(7) all trademarks and trade names, trademark registrations and trademark applications and any other trademarks used with respect to the Purchased Software (hereinafter referred to as the "Trademarks") and all of the good will associated with such Trademarks;

(8) all patents, and patent applications related to the Purchased Software;

(9) all inventory of the Seller as of the Closing;

(10) all of the books and records that relate solely to the Purchased Software, and copies of such other of Seller's books and records relating to the Purchased Software as Purchaser may reasonably request prior to Closing.

(b) Such conveyance, transfer, assignment and delivery shall be further effected by such assignments, deeds, bills of sale and other instruments as shall be reasonably requested by Purchaser. With the exception of royalties payable under Section 1.04 hereof, Seller, White and Reyburn, jointly and severally, retain no interest in the Purchased Software. Any reference in Section 1.02(a) to a Schedule on which are listed the assets transferred in a particular category, shall not limit the generality of the Seller's, White's and Reyburn's obligation to transfer, and Purchaser's purchase of the entire asset category including items not scheduled for any reason.

Section 1.03. Excluded Assets. The Purchased Assets shall not include any equipment, property or other assets not listed in Section 1.02.

Section 1.04. Purchased Price and Payment. Purchaser agrees that in full payment of

the purchase price for the assets, business and properties acquired, and the other rights granted, hereunder in each case as specifically provided herein, including all such rights whether owned individually, jointly, or in any combination, by Seller, White or Reyburn or any subsidiary, or related entity or person ("Affiliate") of any one or more of them:

(a) Purchaser will pay royalties on a quarterly basis equal to five percent (5%) of Purchaser's net product sales per quarter for (a) sales of Purchasers CADKEY® product, (b) sales of separate copies of the Purchased Software, and sales of future products which are incorporated in products set forth in either (a) or (b) of the foregoing (hereinafter "Product Sales"), where such Product Sales occur during the period beginning with the first day following the closing and ending on the first to occur of (i) the seventh anniversary of the Closing or (ii) Purchaser shall have paid to the persons identified Section 1.04(b) a total of $5,000,000.00 in royalties determined pursuant to this Section 1.04(a) or payments in lieu thereof. For purposes of calculating any such Royalties due hereunder, Product Sales shall be Purchaser's net sales as determined by generally accepted accounting principles, consistently applied and shall include all sales whether made by Purchaser or any subsidiary, related entity or person or any other affiliate of Purchaser or any such related or affiliated entity or person (hereinafter "Affiliate"). To the extent that it would result in double counting, gross product sales shall not include transactions solely between

Purchaser and Affiliates that are not end users of the products sold. Royalties shall be paid quarterly within thirty (30) days following the end of each calendar quarter, starting with respect to the calendar quarter that ends on June 30, 1998;

(b) In full satisfaction of the purchase price as determined in Section 1.04 (a) above, Purchaser shall pay simultaneously to each of (i) Seller (or Seller's designee as set forth on Schedule 1.04-(b)), and (ii) Reyburn one half of the amount determined under Section 1.04(a) (or 2.5% Purchaser's Product Sales), such payments together to total the amount determined under Section 1.04(a).

Section 1.05. No Assumed Liabilities. Purchaser does not assume, agree to pay, perform or discharge any liabilities of Seller, White or Reyburn, whether incurred prior to or following the Closing. Notwithstanding the foregoing, Purchaser will assume and agree to perform all existing annual update (upgrade) contracts for the Purchased software which have not expired as of the closing and the Included Contracts. Seller will have delivered to Purchaser on or prior to the Closing a complete and accurate list in all material respects of all such Included Contracts. Except for any liability or obligation referred to in the preceding sentence, Purchaser has not agreed to pay, shall not be required to assume and shall not have any liability whatsoever of Seller, White or Reyburn.

Section 1.06. Delivery. With respect to the Purchased Software, as soon as possible prior to the Closing, Reyburn will deliver an original and one back-up copy on CD ROM of each Pursed Software identified on Schedule 1.02-1 to counsel to Purchaser who shall serve as escrow agent (hereinafter referred to as the "Escrow Agent"). Purchaser shall be permitted to inspect and test the Purchased Software prior to Closing to its satisfaction. Prior to Closing, Seller, White and Reyburn shall retrieve all originals and all copies of the Purchased Software, inventory, customer lists, maintenance databases, end user identification wherever physically located, for delivery to Purchaser at Closing. Seller, White and Reyburn will reasonably satisfy Purchaser that no additional copies of the Purchased Software, customer lists, maintenance database or end user identification remain in the possession of Seller or any third party. The Escrow Agent shall deliver the Purchased Software to purchaser at the Closing.

Section 1.07. Hold Harmless Against Unpaid Creditors. Seller shall on or before the Closing pay in full all creditors of Seller except for those who have not rendered a final bill or with respect to which Seller is duly contesting the validity or appropriateness of any invoice or claim. Seller hereby indemnifies and holds Purchaser harmless form any and all claims of creditors of Seller for any obligations arising at any time prior to or following the Closing.

Section 1.08. Change of Name. Seller will change its corporate name effective not later than 30 days after the Closing to exclude the use of the Words "FastSURF" and "FastSOLIDS" in such name.

Section 1.09. Audit. Purchaser shall maintain complete and accurate records of its sales sufficient to permit the determination of the amounts payable under section 1.04 to Seller. Purchaser shall, upon fourteen (14) days advance written notice received from Seller, but not more frequently that once in any calendar year, permit reasonable inspection of such records by Seller's outside accountants at the office of Purchaser during normal business hours, all at Seller's expense. Seller and its accountants shall maintain in confidence and not disclose to third parties any of the information contained in or derived from the records inspected during such audits without the prior written consent of Purchaser.

ARTICLE II
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller, and where indicated White and Reyburn, represent and warrant to Purchaser that:

Section 2.01. Organization and Good Standing. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of California, and Seller has the

corporate power and authority to enter into this Agreement and carry out the transactions hereby contemplated.

Section 2.02. Corporate Authorization. Seller has taken or by the Closing will have taken all corporate action required to be taken by it to authorize the execution and delivery of the Agreement and the agreements to be executed and delivered by it hereunder (together with this Agreement the" Seller's Documents") and the transactions hereby and thereby contemplated. Seller has or by the Closing will have the corporate power and authority to execute and deliver Seller's Documents and to consummate the transaction thereby contemplated and to take all other actions required to be taken by it pursuant to the provisions thereof; and this Agreement is, and the other Seller's Documents on the Closing will be, valid and binding upon and enforceable against Seller in accordance with their respective terms subject to applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and similar laws and the availability of equitable relief. Neither the execution and delivery of Seller's Documents nor the consummation of the transactions thereby contemplated will constitute any violation or breach of the Certificate of Incorporation or the other instrument to which Seller is a party or any order, writ, injunction, decree, statute, rule or regulation, or will result in the creation of any lien on any of the assets or properties of Seller.

Section 2.03. Title. Seller, White and Reyburn have (or will at the Closing have), and will transfer to Purchaser at the Closing, good and marketable title to all of the Purchased Assets transferred pursuant to this Agreement, in each case free and clear of all liens and encumbrances. Seller, White and Reyburn, either individually or jointly, own each of the Purchased Software, free and clear of all liens and encumbrances. Neither Seller, White or Reyburn has granted to any individual, firm, partnership, corporation, association or other entity any interest in any of the Purchased Software or Purchased Assets, by license or otherwise.

Section 2.04. Contracts. Included Contracts include, but are not limited to , all confidentiality and non-compete agreements relating to the Purchased Software entered into by Seller, White or Reyburn with respect to the Purchased Software with any third party, all existing development, distribution, license and royalty agreements relating to the Purchased Software, and all warranty agreements in effect with respect to the Purchased Software. To the best of Seller's, White's, and Reyburn's knowledge, each Included Contract is valid, binding and enforceable in accordance with its terms, and is in full force and effect. Neither Seller, White or Reyburn is in material default under any material Included Contract and no event has occurred thereunder, which with the lapse of time or the giving of notice would constitute such a material default, and to the knowledge of Seller, White or Reyburn, no other party to any such material

Included Contract is in material default thereunder. Each such Included Contract is assignable to Purchaser without the consent of any third party, and no such Contract requires the consent of any other party thereto to the transactions hereby contemplated.

Section 2.05. Governmental Approvals. No authorization, approval, order, license permit, franchise, or consent and no registration, declaration or filing by or with any domestic or foreign governmental authority is required in connection with the execution and delivery by Seller of this Agreement and the consummation by Seller of the transactions as contemplated hereby.

Section 2.06. Intellectual Property. Seller, White and Reyburn, either individually or together, own the registered and unregistered copyrights to all of the Purchased Software. None of the Purchased Software constitutes a derivative work for purpose of the United States copyright laws of any work the copyright of which is owned at Closing by persons other than Seller, White or Reyburn. Seller owns the registered and unregistered Trademarks. To the best knowledge of Seller, White and Reyburn, none of the Purchased Software and the Trademarks infringes on the intellectual property rights of any third party. Neither Seller, White or Reyburn has not received any notification of infringement by it in connection with the Purchased Software of any intellectual

property rights of third parties. To the best knowledge of Seller, White and Reyburn, no third party is infringing on the rights in or to the Purchase Software of the Trademarks.

Section 2.07. Trade Secret. All of the Purchased Software constitutes a trade secret of Seller, White or Reyburn and each of them has taken all reasonable and necessary steps to preserve such trade secret, and has not granted to any individual, firm, partnership, corporation, association or other entity any interest or rights in any of the Purchased Software, including rights to use, development or enhancement, as licensee or otherwise. Schedule 2.07 also includes a complete list of persons who have had access to the source code comprising any portion of the Purchased Software or documentation which reveals such source code.

Section 2.08. Litigation. Except as otherwise set forth in Schedule 2.08 hereto, as of the date hereof there is no action, suit or proceeding pending or, to Seller's, White's and Reyburn's knowledge, threatened against Seller, White or Reyburn relating to the Purchased Software, and neither of them has received any notice of any pending, or to either's knowledge threatened, action or proceeding against Seller, White or Reyburn the outcome of which would affect materially and adversely their right or ability to convey and transfer the Purchased Assets free and clear of any liens or encumbrances.

Section 2.09. Annual Update Contracts. Schedule 2.09 is a complete and accurate list (in all material respects) of all annual update (upgrade) contracts for the Purchased Software which have not expired as of the Closing.

Section 2.10. Brokerage Commissions. Seller has not incurred any liability for finder's or brokerage, fees or commission in connection with this Agreement or the transactions hereby contemplated.

Section 2.11. Representation At Closing. All of the representations and warranties of Seller made herein shall be true at and as of the Closing as though such representations and warranties were made at and as of such time.

Section 2.12. Customer List. To the best knowledge of Seller, Schedule 1.02-4 is a complete list (in all material respects) of Seller's customers with respect to the Business and end users of the Purchased Software.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller, White and Reyburn that:

Section 3.01. Organization and Good Standing. Purchaser is a corporation duly

organized, validly existing and in good standing under the laws of The Commonwealth of Massachusetts, and has the corporate power and authority to enter into this Agreement and carry out the transactions hereby contemplated.

Section 3.02. Corporate Authorization. Purchaser has taken all corporate action required to be taken by it to authorize the execution and delivery of this Agreement and the other agreements to be executed and delivered by Purchaser hereunder (together with this Agreement, the "Purchaser's Documents") and the transactions hereby and thereby contemplated. Purchaser has the corporate power and authority to execute and deliver Purchaser's Documents, to consummate the transactions thereby contemplated and to take all other actions required to be taken by it pursuant to the provisions thereof; and this Agreement is, and the other Purchaser's documents on the Closing will be, valid, and binding upon and enforceable against Purchaser in accordance with their respective terms. Neither the execution and delivery of Purchaser's Documents nor the consummation of the transactions hereby and thereby contemplated will constitute any violation or breach of the Certificate of Incorporation or the by-laws of Purchaser. Purchaser has the lawful power to own its properties and to engage in the business it conducts, and it is duly qualified and in good standing as a foreign corporation in the jurisdictions wherein the nature of the business transacted by it or property owned by it makes such qualification necessary.

Section 3.03. Government Approvals. No authorization, approval, order, license, permit, franchise, or consent and no registration, declaration or filing by or with any domestic or foreign governmental authority is required in connection with the execution and delivery by Purchaser of Purchaser's Documents and the consummation by Purchaser of the transactions contemplated hereby and thereby. Each consent, approval or authorization of, or filing, registration or qualification with, any person required to be obtained by Purchaser, in connection with the execution and delivery of Purchaser's Documents or the undertaking or performance of any obligation hereunder or thereunder has been duly obtained or effected.

Section 3.04. Brokerage Commissions. Except as set forth on Schedule 3.04 Purchaser has not incurred any liability for finder's or brokerage fees or commission in connection with this Agreement or the transactions hereby contemplated.

Section 3.05. Representation At Closing. All of the representations and warranties of Purchaser made herein shall be true at and as of the Closing as though such representations and warranties were made at and as of such time.

Section 3.06. Litigation. Except as otherwise set forth in Schedule 3.06 hereto, there is

no action, suit or proceeding pending against Purchaser, and Purchaser has not received any notice of any pending or threatened action or proceeding, the outcome of which may affect materially and adversely the business, assets or financial condition of Purchaser, or its ability to undertake the obligations of Purchaser contemplated by this Agreement, in any court, before any arbitrator or arbitration tribunal or before or by any governmental authority, agency or other instrumentality, domestic or foreign. Purchaser is not in default under or with respect to any judgment, order or decree of any court, any arbitrator or arbitration tribunal or any governmental authority, agency or other instrumentality, domestic or foreign, against or affecting the business of Purchaser, or any of Purchaser's assets, and there is no outstanding judgment, order or decree of any court, any arbitrator or arbitration tribunal or any governmental authority, agency or other instrumentality against or adversely affecting Purchaser, or any of its assets.

Section 3.06. Financial Statements. Purchaser has delivered to Seller internally prepared financial statements through December 31, 1997. All of such financial statements have been prepared in accordance with generally accepted accounting practices consistently applied and said financial statements present fairly the financial position of Purchaser as of the date thereof and the results of operation of Purchaser for the periods involved.

ARTICLE IV
CONDITIONS TO PURCHASER'S OBLIGATIONS

All obligations of Purchaser under this Agreement are subject to the fulfillment, at the Closing, of each of the following conditions, any or all of which may be waived in whole or in part at or prior to the Closing by Purchaser:

Section 4.01. Representations and Warranties. The representation and warranties contained in Article II hereof shall be true at and as of the closing, and all of the other representations and warranties contained in said Article II shall be true at and as of the Closing as though such representations and warranties were made at and as of such time.

Section 4.02. Covenants. Seller shall have performed and complied with all agreements and conditions on its part required by this Agreement to be performed or complied with prior to or at the Closing.

Section 4.03. Governmental Consents. Purchaser and Seller shall have made all fillings and petitions required to be made by them prior to the Closing (and all applicable waiting periods shall have received all consents, approvals, authorizations and permits required to be obtained prior to the Closing from, governmental and regulatory authorities of the United States, the several States and foreign jurisdictions, in

connection with the execution, delivery and performance of this Agreement and the consummation of the transactions hereby contemplated.

Section 4.04. Legality. No change shall have occurred in any law, rule or regulation that would prohibit the performance of Purchaser's obligations under Article I hereof.

Section 4.05. Injunctions. No court, agency or other authority shall have issued any order, decree or judgment to set aside, restrain, enjoin or prevent the performance of Purchaser's obligations under Article I hereof nor shall there be pending any suit, action or proceeding requesting such relief or remedy.

Section 4.06. Consents. To the extent necessary, there shall have been obtained the consent, in form and substance reasonably satisfactory to counsel for Purchaser, (i) of each other party to the Included Contracts to the assignment of such Included contracts to Purchaser and/or to the consummation of the transactions contemplated hereby, and (ii) of all applicable governmental authorities, agencies or instrumentalities to the assignment of all those certificates, licenses, permits, authorizations and approvals.

Section 4.07. Non-competition Agreements with Key Personnel. Purchaser shall have entered into one or more employment,

consulting and non-competition agreement with David Reyburn in a form or forms satisfactory to Purchaser.

Section 4.08. Conveyances. Purchaser shall have received all conveyances, covenants, warranties, deeds, assignments, bills of sale, confirmations, powers of attorney, approvals, consents and any and all further instruments as may be reasonably necessary in order to complete any and all conveyances, transfers, assignments and deliveries provided for herein and to convey to Purchaser title to the assets, properties and software conveyed hereunder.

Section 4.09. Legal Matters Satisfactory. All actions, proceedings, instruments and documents required by or from Seller to carry out the transactions contemplated by this Agreement, or incidental thereto, and all other relevant legal matters, shall be reasonably satisfactory in all respects to counsel for Purchaser.

Section 4.10. Consent of Shareholders and Directors. Seller shall have obtained approval of this Agreement and the transaction contemplated hereby by its Board of Directors and its Shareholders.

Section 4.11. Confidentiality Agreements. Purchaser shall have received evidence in a form reasonably satisfactory to Purchaser that the persons or entities who have had

access to the source code of the Purchased Software have entered into appropriate understandings of confidentiality and restrictions on use.

ARTICLE V
CONDITIONS TO SELLERS' OBLIGATIONS

All obligations of Seller, White and Reyburn under this Agreement are subject to the fulfillment, at the Closing, of each of the following conditions, any or all of which may be waived in whole or in part at or prior to the Closing by Seller, White and Reyburn.

Section 5.01. Representations and Warranties. The representations and warranties contained in Article III hereof shall be true at and as of the Closing, and all of the other representations and warranties contained in said Article III shall be true at and as of the Closing as thought such representations and warranties were made at and as of such time.

Section 5.02. Purchaser's Board of Directors Approval. Purchaser shall have obtained approval of this Agreement and the transaction contemplated hereby by its Board of Directors.

Section 5.03. Covenants. Purchaser shall have performed and complied with all agreements and conditions on its part required by

this Agreement to be performed or complied with prior to or at the Closing.

Section 5.04. Governmental Consents. Purchaser, and Seller shall have made all filings required to be made by them prior to the Closing (and all applicable waiting periods shall have expired) with, and Seller shall have received all consents, approvals, authorizations and permits required to be obtained prior to the Closing form, all governmental and regulatory authorities of the United States, the several States and foreign jurisdictions, in connection with the execution, delivery and performance for this Agreement and the consummation of the transactions hereby contemplated.

Section 5.05. Legality. No change shall have occurred in any law, rule or regulation, that would prohibit the performance of Seller's obligations under Article I hereof.

Section 5.06. Injunctions. No court, agency or other authority shall have issued any order, decree or judgment to set aside, restrain, enjoin or prevent the performance of Seller's obligations under Article I hereof nor shall there be pending any suit, action or proceeding requesting such relief or remedy.

Section 5.07. Legal Matters Satisfactory. All actions, proceedings, instruments and documents required by or from Purchaser to

carry out this Agreement, or incidental thereto, and all other relevant legal matters, shall be reasonably satisfactory in all respects to counsel for Seller.

ARTICLE VI
NON-COMPETITION AND CONFIDENTIALITY

Section 6.01. Non-Competition; Use of Names; Confidentiality. Seller and White, jointly and severally, and Reyburn individually, covenant and agree that from and after the closing they shall not:

(a) At any time prior to the fifth anniverwsary of the Closing, in any state in the United States, or in any other country in the world, own, manage, operate, join or control, or participate in the ownership, management, operation or control of any business, firm or corporation which engages in the business of designing, manufacturing, selling or distributing products which compete with the Purchased Software; provided, however, that the provisions of this Section 6.01 (a) shall not apply to investments in securities of a corporation traded on a registered national securities exchange or on the Noational Over-The-Counter Market, which shall constitute less than five percent (5%) of the outstanding voting shares of such corporation.

(b) Directly or indirectly use or permit to be used in any manner the names FastSURF and FastSOLIDS (or any other trademark or trade

name currently used in the Business) or any name or names similar to or likely to be confused with such names (or any other trademark or trade name currently used with respect to the Purchased Software.

(c) At any time prior to the fifth anniversary of the Closing, directly or indirectly, solicit any employee of Purchaser to become an employee of Seller, White or Reyburn or any affiliate of any of them.

(d) At any time prior to the fifth anniversary of the Closing, use or disclose to any party any non public information with respect to the Business except as may be required by court or government order or applicable law or for Seller to obtain director or shareholder approval of the transactions contemplated hereby.

(e) At any time prior to the fifth anniversary of the Closing, engage in any conduct which is disparaging of Purchaser or it products or which interferes with Purchaser's business relationships or its possession, enjoyment and commercial exploitation of the Purchased Software.

Section 6.02. Breach. In the event of a breach or threatened breach of the provisions of Section 6.01, in addition to any other remedies Purchaser may have at law or in equity and notwithstanding the provisions of Section 10.11, Purchaser shall be entitled to seek an injunction or similar remedy so as to enable it specifically to enforce such provisions.

ARTICLE VII
POST-CLOSING COVENANTS

Section 7.01. Further Assurances. From and after the Closing, Seller, White and Reyburn shall, at any time and from time to time, make, execute and deliver, or cause to be made, executed and delivered, such assignments, deeds, bill of sale, drafts, checks, stock certificates, returns, filings and other instruments, consents and assurances and take or cause to be taken all such action as counsel for Purchaser may reasonably request for the effectual consummation, confirmation and particularization of this Agreement and the transactions hereby contemplated. The out-of-pocket costs and expense of any further assurances shall be borne by Purchaser.

ARTICLE VIII
TERMINATION AND ABANDOMENT

Section 8.01. Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual consent of Purchaser and Seller;

(b) by Purchaser, if there has been a material violation or breach by Seller of any agreement, representation or warranty contained in this Agreement, or if the satisfaction of any condition to the obligations of Purchaser hereunder

becomes impossible or has not occurred on or before April 30, 1998, and such violation, breach or condition has not been waived by Purchaser; or

(c) by Seller, White or Reyburn if (1) there has been a material violation or breach by Purchaser of any agreement, representation or warranty contained in this Agreement, or if the satisfaction of any condition to the obligations of Seller, White or Reyburn hereunder becomes impossible or has not occurred on or before April 30, 1998, and such violation, breach or condition has not been waived by Seller, White or Reyburn or (2) Seller's directors and shareholders do not approve the transactions contemplated b y this Agreement by April 30, 1998.

Section 8.02. Term. Unless otherwise terminated pursuant to Section 8.01, this Agreement shall extend for a term ending upon the earlier of the expiration of any obligation of Purchaser to pay royalties to Seller under Section 1.04, or the fifth anniversary of this Agreement.

ARTICLE IX
INDEMNIFICATION

Section 9.01. By Seller. Seller, agrees to indemnify and hold harmless Purchaser from and against, and to reimburse Purchaser on demand with

respect to, any and all loss, damage, liability, claims, costs and expense, (including, without limitation, reasonable attorneys' and accountants' fees) actually incurred by Purchaser by reason of or arising out of or in connection with (i) the material breach of any representation or warranty contained in Article II hereof or in any certificate or other document delivered to Purchaser pursuant to the provisions of the Agreement, (ii) the failure of Seller to perform any agreement required by this Agreement or any other agreement contemplated hereby to be performed by it, not excused by the failure of Purchaser to meet a condition required by Purchaser to Seller's performance, (iii) any failure to obtain any material consent required by Purchaser to be obtained by Seller pursuant to this Agreement or the transactions contemplated hereby if the Closing is consummated, (iv) any liability or obligation of Seller not expressly assumed by Purchaser pursuant to Article I hereof, (v) any liability or obligation to employees of Seller. Purchaser agrees to give prompt notice to Seller of the allegation by any third party of the existence of any liability, obligation, contract, other commitment or state of facts referred to in this Section 9.01 and Seller shall have the right to participate in the contest, defense, settlement or compromise of any such claim at their own cost and expense, including the cost and expense of attorneys' fees in connection with such contest, defense, settlement or compromise. Purchaser shall not settle or compromise any such claim without the prior written consent of Seller, which shall not be unreasonably withheld.

Section 9.02. By Purchaser. Purchaser agrees to indemnify and hold harmless Seller from and against, and to reimburse Seller with respect to, any and all loss, damage, liability, claims, costs and expense, including, reasonable attorneys' and accountants' fees, incurred by Seller by reason of or arising out of or in connection with (i) the breach of any representation or warranty contained in Article III hereof, or in any certificate or other document delivered by Purchaser to Seller under Agreement, (ii) the failure of Purchaser to perform any agreement required by this Agreement or any other agreement contemplated hereby to be performed by it, (iii) any action, suit, charge, complaint, proceeding or investigation to the extent arising out of or in connection with the business operations of Purchaser subsequent to the Closing or (iv) any liability or obligation expressly assumed by Purchaser pursuant to Article I hereof. Seller agrees to give prompt notice to Purchaser of the allegation by any third party of the existence of any state of facts referred to in this Section 9.02 and Purchaser shall have the right to participate in the contest, defense, settlement or compromise of any such claim at its own cost and expense, including the cost and expense of attorneys' fees in connection with such contest, defense, settlement or compromise. Seller shall not settle or compromise any such claim without the prior written consent of Purchaser, which shall not be unreasonably withheld.

ARTICLE X
MISCELLANEOUS

Section 10.01. Expenses. Each of the parties hereto shall pay its own expenses (including attorney's fees) in connection with this Agreement and the transactions hereby contemplated.

Section 10.02. Notices. All notices required or permitted hereunder shall be in writing and shall be given when personally delivered or sent by registered or certified mail, postage prepaid, or by telegram, cable, telex or facsimile. Such notices shall be addressed respectively:

As to Seller and White:

Robert White
FastSURF, Inc.
340 So. Washington Street
Sonora, CA 95370

As to Reyburn:

David Reyburn
Advancing Geometrics, Inc.
20544 County Road
Goshen, IN 46526

Copy to:

>

As to Purchaser:

Karen L. Bean
Baystate Technologies, Inc.
33 Boston Post Road West, Suite 420
Marlborough, MA 01752

Copy to:

George B. Sanders, Jr., Esq.
Bowditch & Dewey
311 Main Street
Worcester, MA 01608

Or to any other address which such party may have subsequently communicated to the other party in writing.

Section 10.03. Amendments, etc. All prior agreements, contracts, promises, representations and statements, if any, among the parties hereto, or their representatives, as to the subject matter hereof, are merged into this Agreement and this Agreement and the other agreements entered into in connection herewith shall constitute the entire agreement between them. This Agreement, supersedes all prior written and oral understandings of the parties, and no waiver or modification of the terms hereof shall be valid unless in writing signed by the party to be charged and only to the extent therein set forth.

Section 10.04. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of The Commonwealth of Massachusetts applicable to contracts made and wholly performed in such state by residents thereof without giving effect to the conflict of laws principles thereof.

Section 10.05. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective sucessors and assigns, provided that this Agreement may not be assigned to any third party without the prior written consent of the other party; provided, however, that Purchaser may assign this Agreement in connection with the sale of substantially all of its business or assets, or a transaction of substantially the same effect.

Section 10.06. Publicity. Purchaser and Seller shall consult with one another before issuing any press release or public announcement about the transactions contemplated by this Agreement. Except as my be required by applicable law, no party shall issue any press release or other public announcement without the consent of the other party, which shall not be unreasonably withheld.

Section 10.07. Taxes. Any taxes in the nature of title transfer, recordation or registration taxes, documentary stamps or similar fees but not including and federal or state income, excise, employment, dales, use, revenue, capital gain or

similar taxes and related withholding taxes, payable on the sale or transfer of all or any portion of the assets, properties or business being transferred hereunder or the consummation of any other transaction contemplated hereby, shall be shared equally by Purchaser and Seller at or after the Closing.

Section 10.08. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute a single agreement.

Section 10.09. Captions. The captions and the table of contents appearing in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope and intent of this Agreement or any of the provisions hereof.

Section 10.10. Third Party. Other than the parties hereto, no person shall have any rights under or to enforce any provisions of this Agreement.

Section 10.11. Disputes; Resolution and Arbitration. This paragraph will govern any dispute between or among any of the parties hereto, arising from or related to the subject matter of this Agreement that is not resolved by agreement between their respective personnel responsible for day to day administration and performance of this Agreement.

Prior to the filing of any suit with respect to such a dispute (other than a suit seeking injunctive relief with respect to intellectual property rights), the party believing itself aggrieved (the "Invoking Party") will call for progressive management involvement in the dispute negotiation by notice to the other party. Such a notice will be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement.

The parties agree that they will use their best efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between their negotiators at the following successive management levels, each of which sill have a period of allotted time as specified below in which to attempt to resolve the dispute:

PURCHASER	SELLER and WHITE	Reyburn	TIME
First Level	CFO	White	Reyburn 10 days
Second Level	CEO	White	Reyburn 10 days

The allotted time for the first-level negotiators will begin on the effective date of the Invoking Party's notice. If a resolution is not achieved by the negotiators at any given management level at the end of their allotted time, then the allotted time for the negotiators at the next management level, if any, will begin immediately. If a resolution is not achieved by negotiators at the final management level within their allotted time, then either party

may within ten (10) business days request mediation to resolve the dispute.

The Mediation Rules of the American Arbitration Association shall be used unless the parties to the dispute agree otherwise. The mediation shall take place in the city located nearest to the party that did not initiate the mediation. The allotted period for the completion of the mediation shall be thirty (30) days. If a resolution is not achieved by mediation within the allotted time or if mediation is not requested with the permitted ten-day period; then either party may file an arbitration demand or other permitted action to resolve the dispute.

Section 10.12. Arbitration. In the event a dispute between the parties arising under this Agreement is not resolved using the procedures of Paragraph 10.11, the parties shall submit to binding arbitration before a single arbitrator in Boston, Massachusetts, under the Commercial Arbitration Rules of the American Arbitration Association, except that temporary restraining orders or preliminary injunctions, or their equivalent, may be obtained from any court of competent jurisdiction. The pre-hearing and hearing proceedings in the arbitration shall be generally governed by the Federal Rules of Civil Procedure and the judicial precedent interpreting those rules. The decision of the arbitrator shall be final and binding with respect to the dispute subject to the arbitration and shall be enforce able in any court of competent

jurisdiction. Each party shall bear its own expenses, attorney's fees and costs incurred in such arbitration.

Section 10.13. Mutual Release of Parties. In consideration of good and valuable consideration and of the promises and representation contained here, the receipt whereof is hereby acknowledged, each of the parties hereto hereby expressly releases each of the other parties hereto and forever discharges such other party and any and all affiliates, subsidiaries, directors, officers, employees and agents of such other party for all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, which against such other party and any and all affiliates, subsidiaries, directors, officers, employees and agents of such other party which the Releasing Party now has or ever had form the beginning of the world. This Release is not intended to otherwise affect the parties' future rights and responsibilities which they have with respect to each other under this Agreement.

IN WITNESS WHEREOF, each of the parties hereto has executed this Agreement the day and year first above written.

FastSURF, INC.	BAYSTATE TECHNOLOGIES INC.
By: /s/ Robert White	By: /s/ Karen L. Bean
Title President	Title COO
/s/ Robert White	/s/ David Reyburn
Robert White	David Reyburn